Supreme Court, U. S.
FILED
JUL 11 1977
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

No. 76-1744

ANDY WALLACE BARNETT ..... PETITIONER

VS.

UNITED STATES OF
AMERICA ..... RESPONDENT

APPENDIX TO
PETITION FOR WRIT OF CERTIORARI

BLAKE PAGE
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FILED
JAN 4 1977
JOHN P. HEHMAN, Clerk

Nos. 76-1373, 1374 and 1375

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee

V.

ANDY WALLACE BARNETT (76-1373)
RICE VINCE WILLS, JR. (76-1374)
GERALD PATRICK HENDRICKS (76-1375)

Defendants-Appellants

ORDER

Before: EDWARDS, LIVELY and ENGEL, Circuit Judges

These consolidated appeals challenge the convictions of appellants Barnett, Wills and Hendricks of conspiracy to violate 21 U.S.C. §§ 846

and 841(a)(1) by knowingly and intentionally distributing ten pounds of cocaine and to violate 18 U.S.C. §471 by counterfeiting obligations of the United States with intent to defraud and, in count II, of knowingly and intentionally distributing 1.13 grams more or less of phencyclidine, a Section III controlled substance as defined in 21 U.S.C. § 812, in violation of 21 U.S.C. §841(a)(1). While numerous allegations of error and violation of defendants' respective rights are alleged with respect to the conviction of count I, the court, upon a careful review of the briefs and records of the case, is of the opinion that those claims are without merit and that no error intervened to deprive the defendants of a fair trial on that count.

With respect to count II, however, it appears that, upon the undisputed proofs and any reasonable inferences to be made therefrom, none of the defendants was aware that the substance which was distributed was, in fact, phencyclidine as described in said count and that, therefore, there was insufficient evidence of this element of the offense to warrant submission of the issues to the jury, appellants having preserved their rights on appeal by timely motions for acquittal. Accordingly,

IT IS ORDERED that the sentences and convictions of count II be vacated and set aside and the cause remanded for dismissal of said count as to

defendants herein, but that the sentence and judgment of conviction of count I is in each instance to stand and is hereby affirmed.

ENTERED BY ORDER OF THE COURT

/s/ John P. Hehman
Clerk

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